



Oregon

Kate Brown, Governor

Department of Agriculture

635 Capitol St NE
Salem, OR 97301-2532



May 4, 2018

Mark Nussbaumer
Nussbaumer Dairy
22747 Phillips Rd
Hillsboro, OR 97124

RE: Required Action #3 for Notice of Noncompliance/Plan of Correction (NON/POC)
#1828160

Dear Mr. Nussbaumer:

On November 5, 2015, your dairy facility was registered to the Oregon Confined Animal Feeding Operation (CAFO) Water Pollution Control Facilities (WPCF) permit #2015-1. This permit allows for CAFOs to land apply manure and process wastewater, and to operate any manure or process wastewater systems. The WPCF CAFO Permit does not allow any discharges to surface waters of Oregon, from the production area or any manure or process wastewater systems.

On April 9, 2018, during a scheduled, routine inspection, a department representative noticed colored water in the Phillips road ditch, located downhill from your collection pit. An inspection of the manure reception pit and adjacent parts of the production area, found that storm water (from a non-working gutter) had mixed with the contents of the manure reception pit causing the reception pit to overflow, discharge into the adjacent pasture and ultimately, into the Phillips Rd. ditch. After completing the routine inspection, the department representative pulled 2 (two) water samples from the road ditch, to be sampled for *E. coli*.

On April 12, 2018, the department received the results of the samples (enclosed). The sample results show a discharge from your production facilities (collection pit) had entered the road ditch. This discharge caused a violation of the state's water quality standard for bacteria.

As your facility is on a permit that does not allow any surface water discharges, and the results from April 9th show a surface water discharge occurred, your facility must now register to the CAFO National Pollutant Discharge Elimination System (NPDES) permit.

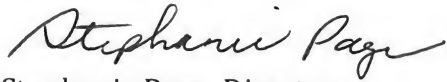
As listed on NON/POC #1828160, please submit the completed Application to Register by June 1, 2018.

As a "new" NPDES permittee, your facility's application and Animal Waste Management Plan will be subject to the public notice requirements of the NPDES CAFO general Permit #2016-01.



If you have questions about the new CAFO Permit application or the public noticing and participation process, please contact Charlene Olson, your area Livestock Water Quality Specialist, at 503-986-4780.

Sincerely,

A handwritten signature in black ink that reads "Stephanie Page". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Stephanie Page, Director
Natural Resources & Pesticide Programs
PH (503) 986-4727
spage@oda.state.or.us

Enclosures: Sample Results and Map
NON/POC #1828160
Application to Register to the NPDES permit

cc: Charlene Olson, AREA II LWQS

SP/wm/co/js

18281100

CASE FILE NO.

1036014

MASTER ADDRESS NO.

NOTICE OF NONCOMPLIANCE OR NOTICE OF NONCOMPLIANCE & PLAN OF CORRECTION



Oregon Department of Agriculture
Natural Resources Division
635 Capitol Street NE
Salem, Oregon 97301-2532
(503) 986-4700

Nussbaumer Dairy
CONFINED ANIMAL FEEDING OPERATION (CAFO)

Mark Nussbaumer
CAFO OPERATOR'S NAME

22747 Phillips Rd, Hillsboro, OR 97124
STREET ADDRESS, CITY, STATE, ZIP

503-647-2788
PHONE NUMBER

On April 9, 2018
MONTH, DAY, YEAR

Charlene Olson
INSPECTOR'S NAME

of the Oregon Department of Agriculture met with you to review your compliance with the Oregon CAFO General Permit or the Oregon CAFO Individual Permit issued for your operation by the Department of Agriculture, and state laws and regulations relating to protection of the state's waters. The principal requirement of the permit is that animal wastes be managed so pollutants do not discharge into surface waters or impact groundwater. You are also required to contain, treat, hold and dispose of wastes in a manner that does not adversely impact water quality.

Based on the inspector's observations and report, the department concludes that conditions exist at your operation that are in violation of your CAFO permit and state water quality laws. The purpose of this **Notice of Noncompliance (NON)** or **Notice of Noncompliance & Plan of Correction (POC)** is to identify for you the conditions of your operation that are out of compliance and must be corrected. The department is committed to working with you as you take the necessary actions to bring your CAFO into compliance.

Description of Violation(s):

S2.A - discharge to surface water

S2.H - Operation & Maintenance

S2.E.1 - adequate storage capacity

Required Corrective Action(s) and Compliance Schedule:

To correct the violation(s) you are directed to take the following actions by the date(s) indicated.

- #1 Immediately stop all discharges.
- #2 Immediately repair all sources that puts clean water into the liquid storage. I.e: gutters & downspouts
- #3 By June 1, 2018, complete & submit the Application to Register to the NPDES permit.

Thank you for your cooperation in these matters. If you have any questions, please contact me.

Under the Oregon Plan for Salmon and Watersheds, Oregonians across the state are working together in a spirit of cooperation to restore and maintain our rivers, lakes and streams for multiple uses. By completing the measures described above, you can do your part to protect and improve water quality.

Sincerely,

INSPECTOR'S SIGNATURE
Livestock Water Quality Specialist
CAFO Program, Natural Resources Division
Phone: _____

REVISED 7/2017

COMPLIANCE REPORTING

You are required to meet all compliance dates established in this POC. Notify the department in writing of the status of each activity or corrective measure. This notification must be postmarked or delivered personally not later than 14 calendar days following each compliance date set out in the Compliance Schedule.

COMPLIANCE EXTENSION REQUEST

In the event you cannot meet a compliance date due to circumstances beyond your reasonable control including, but not limited to, fire, flood, explosion or other acts of nature, or a delay in delivery of materials or services if ordered in a timely manner, you may request that the director extend the compliance schedule. Requests for extension must be made in writing and must be received not later than 14 calendar days before the application compliance date.

COMPLIANCE FAILURE CONSEQUENCES

The department is committed to working with you as you complete the actions required to bring your permitted operation/facility into compliance with your CAFO permit and water quality laws. However, we remind you that it is your responsibility to complete the corrective action(s) by the dates set out in this POC. If you fail to complete the corrective action(s) as required, the department will take enforcement action. Failure to perform any requirement of this plan is a violation of department rules, Oregon Administrative Rules (OAR) 603-74-010-(23). The department may also consider a failure to complete any requirement of this POC as failure to correct the violation(s) within a reasonable time. Should this situation arise, the department may assess a civil penalty for the violation. The department also has the authority to revoke a CAFO permit, or to modify the permit to limit the maximum number of animals to the number whose wastes the facility can contain, treat, hold and dispose of in compliance with the permit conditions.

AMENDMENT (other than extension of compliance dates)

This POC may be amended in writing by the department. Examples of reasons for considering an amendment include proposals to use alternative corrective measures that provide an equivalent degree of water quality protection, and changes in water quality regulations that necessitate changes in the POC.

COMPLETION OF THE PLAN OF CORRECTION

This POC is deemed complete by the department when you satisfactorily complete all requirements of the POC identified above including reporting. The department will notify you of satisfactory completion in writing.

APPEAL RIGHTS

This is an order in other than a contested case. This order is subject to judicial review under Oregon Revised Statutes (ORS) 183.484. A petition of judicial review must be filed within 60 days of the date this order is served, as specified by ORS 183.484(2). You may also request reconsideration of this order by filing a petition for reconsideration with the department within 60 calendar days after the date of the order, OAR 137-004-0080. A petition for reconsideration must set out the specific grounds for reconsideration and may be supported by a written argument.

NOTICE TO ACTIVE DUTY SERVICE MEMBERS

Active-duty service members have a right to stay these proceedings under the Federal Service Members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-7500, the Oregon Military Department at 800-452-7500, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

LABORATORY SERVICES
Phone: (503) 872-6644
FAX: (503) 872-6615



OREGON DEPARTMENT OF AGRICULTURE
1207 NW NAITO PARKWAY, STE 204
PORTLAND, OREGON 97209-2835
Laws and Regulations Administered by
Natural Resources Division: (503) 986-4700

REPORT OF LABORATORY ANALYSIS - CAFO SAMPLES

Requesting Division:
ODA, Natural Resources Division
635 Capitol St. NE
Salem, OR 97301
Contact: Wym Matthews

Sample Source:
Nussbaumer Dairy
, OR

Sampled at: Road ditch
Date Sampled: 4/ 9/18 Sampled by: Charlene Olson
Date Received : 4/ 9/18 Time Received 14:50 Received by: Bdinntorn B. Nuanual
Analysis began: 4/ 9/18 at 15:35

Method of Sampling: Grab & Iced
Reason for Sampling: Runoff
Related Samples:

SAMPLE IDENTIFICATION & ANALYTICAL REPORT

Laboratory Number: 18-A1742 Sample Number: 1828157A
Time Sampled: 11:15 Site Information: East

Method Reference	Analysis Requested	Analytical Results	Analysts
SM 9223B	E. coli	34,000 MPN/100ml	WJF

Laboratory Number: 18-A1743 Sample Number: 1828157B
Time Sampled: 11:17 Site Information: West

Method Reference	Analysis Requested	Analytical Results	Analysts
SM 9223B	E. coli	45,000 MPN/100ml	WJF

Reviewed by: Ji-Madden

Date: 4/11/18

Nussbaumer Dairy
MA# 63614
Sample Date: 4/9/2018

PHILLIPS Rd

ALPHORN Rd

Sample#: 1828157A
E_coli: 45,000 MPN/100 ml

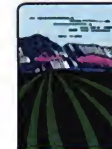
Sample#: 1828157B
E_coli: 34,000 MPN/100ml

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, Sateo, Swire

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Department
of Agriculture